

STATEMENT OF
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OFFICE OF THE GOVERNOR
TO THE
U.S. ENVIRONMENTAL PROTECTION AGENCY
PROPOSED PUBLIC HEALTH AND ENVIRONMENTAL PROTECTION STANDARDS
FOR YUCCA MOUNTAIN, NEVADA
LAS VEGAS, NEVADA
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I am Robert Loux, Executive Director of the Nevada Agency for Nuclear Projects, a branch of the Office of the Governor. The Agency was established by the Nevada Legislature in 1985 to oversee the activities of the federal government with regard to the management and disposal of high-level nuclear waste created by the nuclear power industry and U.S. weapons programs. We are currently reviewing EPA's Proposed Public Health and Environmental Protection Standards for Yucca Mountain and will provide extensive written comments on behalf of the State of Nevada before the close of the comment period.

Before discussing our preliminary views of EPA's proposal, I would like to acknowledge EPA for at least partially honoring our and others' request to extend the originally-announced 60-day public comment period. Although we requested a 180-day comment period, the 30 day extension has resulted in a total of 90 days for public review and comment on this complex proposal that occupies 51 pages of space in the Federal Register. We are disappointed, however, that our request to hold a hearing convenient to Nevadans in the northern part of the State was

denied by EPA.

We are here today because in July, 2004, the U.S. Circuit Court of Appeals ruled that EPA violated the law when it issued its 2001 standards for protection of Nevadans' health and safety from high-level nuclear waste potentially to be disposed at Yucca Mountain. Federal law requires EPA to write a Yucca Mountain standard "based upon and consistent with" the findings and recommendations of the National Academy of Sciences' report on the technical bases for a Yucca Mountain standard. The Court found that EPA, in blatant disregard of the NAS's recommendation, wrote a standard that did not explicitly require compliance at the time of expected maximum risk to public health and safety.

EPA's revised proposal, while advertised as its most rigorous rule ever because it seeks to extend health and safety regulations out to one million years, is actually an unprecedented example of obfuscation, federal agency collusion, morally bankrupt standard-setting. If adopted, the proposed Yucca Mountain standard will permit countless generations of Nevadan to be intentionally exposed to levels of radiation that would never be tolerated elsewhere, either in the United States or internationally.

It is an undisputed fact that waste disposed at Yucca Mountain will be released to the environment. When will it be released? Whenever the metal waste containers and other man-made metal barriers corrode away due to natural moisture in the mountain. DOE says that process will not result in significant releases sooner than many tens of thousands of years. But there are scenarios that result in much earlier releases, and to believe DOE's version you have to make a huge leap of faith by conceding that man-made waste disposal containers will remain intact for 10,000 years or more. That's because, according to DOE's own calculation, if there were no metal barriers, radiation would be released to the environment, in excess of EPA's

proposed limit, in less than 1,000 years.

It is no coincidence that EPA's proposed standard for the post-10,000 year period, allows radiation doses tens of times higher than during the initial period, at a level far beyond what EPA, in its previous rulemaking, said "No regulatory body would consider...acceptable." The only possible reason for the use of a convoluted bifurcated standard is EPA's commitment to promulgate a standard that will make DOE's life easier in the NRC's licensing process.

EPA's unprecedented proposed maximum dose limit for an individual after the first 10,000 years is 14 times higher than the dose limit currently allowed for low-level radioactive waste disposal in the U.S. It is also more than 10 times higher than the level of protection recommended by the NAS study, or any other equivalent regulation worldwide.

When the court vacated EPA's original Yucca Mountain rule in 2004 for, among other things, limiting the period of compliance to just 10,000 years, the simplest and most logical thing for EPA to do was to extend the same allowable dose rate from 10,000 years for the entire life of the repository. Yet EPA rejected that solution out of hand. Why? As EPA representatives themselves acknowledged in a meeting with Nevada officials earlier this year, to do would disqualify Yucca Mountain, and EPA has been directed to assure that doesn't happen. Instead, EPA has produced, in unabashed collusion with DOE, a standard that, just coincidentally, allows exposures slightly higher than DOE's most optimistic estimates of what the maximum releases from Yucca Mountain will be after 10,000 years. EPA has manufactured a standard tailored to fit the site, not to protect public health and safety.

In its earlier Yucca Mountain rule, EPA set a separate groundwater protection standard that limits radiation in groundwater, available for human use such as in Amargosa Valley, to

levels required for safe drinking water throughout this country. In the proposal new standard, EPA ends that protection after 10,000 years, leaving drinking and irrigation water with only the higher, unacceptable dose limit. Nowhere in its regulations or policies, except here, does EPA put a time limit on protecting the quality of our drinking water resources. And again, collusion is obvious, since DOE's performance models show Yucca Mountain will greatly exceed safe drinking water levels for radiation during the period of maximum releases.

Because predicting future climate, over both the short and long term, is inexact science at best, EPA has written its rule to permit DOE to make, for compliance purposes, the one future ~~climate assumption we know not only to be wrong but also absurd. Future climate at Yucca~~ Mountain is important because it strongly influences the rate at which the waste containers and other metal barriers corrode. EPA, in its new proposal, permits the assumption that after 10,000 years and out to one million years, the climate at Yucca Mountain can be set assumed to remain unchanged for purposes of the dose limit compliance determination. Enough is known about past variations of climate to not only see the absurdity of such an assumption, but to actually put some limits on the magnitude of change to be expected in the future. Obviously, EPA can do better than to allow the assumption that climate will remain unchanged after the next 10,000 years. The fact that the Agency has not done so is additional evidence of assisting DOE and of EPA's clear intent to pave the way for Yucca Mountain licensing rather establish legitimate and truly protective health and safety regulations.

Throughout the history of nuclear power and its regulation, it has been held that it is unethical to pass on to future generations health and safety risks that we, of this generation, are unwilling to impose upon ourselves. In its proposal, EPA, for the first time in its regulatory history, has broken with this principle, setting the United States apart from other nations in the world in its disregard for the health and safety of future generations. This is unacceptable.

EPA's proposed rule is unacceptable on all counts. It flaunts the intent of the Court, which was to assure that Yucca Mountain be judged, using credible science, based on the maximum expected risk to human health and safety. Instead, EPA is transparently and unethically acting to facilitate Yucca Mountain licensing by literally stacking the deck with unprecedented and irresponsible breaks from established regulatory and ethical principles.

In developing the proposed Yucca Mountain health and safety standard, EPA has turned the standard-setting process on its head. Instead of designing a regulation to protect current and future generations by assuring that the proposed repository site is, in fact, capable of isolating ~~deadly nuclear waste, EPA has worked hand in glove with DOE to design a standard with a~~ single objective in mind - that it will not disqualify the site. Given Yucca Mountain's porous geology, release of the radioactive waste is inevitable and, when it occurs, irreversible. EPA must withdraw this proposal and replace it with one that extends meaningful protection to the time when the risk is at its greatest, and let the chips fall where they may with regard to the implications for licensing the site. To do anything less is a gross disservice not only to Nevadans, but to the country as a whole.